

THE UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS (Boston)

No. 1:23-cv-10511-WGY
Vol 1, Pages 1 - 83

UNITED STATES OF AMERICA, et al,
Plaintiffs

vs.

JETBLUE AIRWAYS CORPORATION, et al,
Defendants

For Bench Trial Before:
Judge William G. Young

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
Thursday, November 16, 2023

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1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 THE COURT: Good morning. If you'd remind the
4 witness.

5 THE CLERK: I'd like to remind you, sir, that you
6 are still under oath.

7 Do you understand?

8 THE WITNESS: Yes, I do.

9 THE COURT: You may continue.

10 MR. DOIDGE: Thank you, your Honor.

11

12 DIRECT EXAMINATION BY MR. DOIDGE: (Continued.)

13 Q. Mr. Lage, when we broke yesterday -- and good
14 morning, we were examining Lage Demonstrative D. If you
15 could turn back to that. Lage Demonstrative D is taken
16 from Exhibit 332 in evidence.

17 A. (Looks.) Okay.

18 Q. And so, Mr. Lage, each of these columns relates to
19 a -- each of the columns that you see in the
20 demonstrative, relates to a position in the United
21 Airlines 8-character alphanumeric fare basis code,
22 correct?

23 A. Yes, they do.

24 Q. And you created this based on your observation of
25 how United was using its fare basis codes at this point

1 in time, correct?

2 A. The document was created from, um, ATPCO data which
3 are then used to, um, try to, um, decipher what each
4 character in the fare basis code could possibly mean as
5 I observed the data.

6 Q. And so just to be clear. If we just take, for
7 example, the third row, that is -- well let's use the
8 4th row -- the 4th column.

9 The 4th column is identified as "AP," right?

10 A. That's correct, that would be the "Advanced
11 Purchase" restriction of the fare.

12 Q. Thank you. And what you see in the United fare
13 basis codes, in that 4th character, is that they may be
14 using a 2, a 4, a 1, a 7, a 3, etc., right?

15 A. Correct. So at that time, based on the ATPCO
16 data, that's what it was telling me.

17 Q. And what you were to decipher is that 2, in that
18 position of the United fare basis code, is equivalent to
19 or demarcates a 21-day Advanced Purchase fare for
20 United, right?

21 A. That's correct. So when I looked at United
22 Airlines' fares, we look at that specific fare rule
23 governing that fare, it appeared that at the time a 2 in
24 the 4th position would require a customer, 21 days in
25 advance, to obtain that fare.

1 Q. And you're going through this exercise to gain a
2 better understanding of what the United fares may be
3 related to, right, that's part of this process for you?

4 A. That's one of the, um, things that I try to do, yes.

5 Q. Now directing your attention to Column F, the 6th
6 column, you've labeled this as "Match," right?

7 A. That's a term used very loosely. Again this is my
8 cheat sheet, so basically meaning by "Match," what I'm
9 trying to say here is that's possibly being filed in
10 order to be competitive for this specific carrier.

11 Q. To put it slightly differently, there you're
12 observing that at this point in time United was using
13 this character in its fare basis codes to track sort of
14 specific competitor issues, right?

15 A. Right, they appeared to be using that character
16 whenever they were addressing a competitive issue in
17 their market with Frontier Airlines.

18 Q. So United is using a unique tab to identify that the
19 fares related to a specific competitive purpose, right?

20 A. Correct. The fare was filed, um -- it appeared from
21 my observations, based on fare levels and rule
22 restrictions, that the fare filed with this character
23 was a competitive filing, um, for Frontier in their
24 markets.

25 Q. Okay. And that's -- and when you say "for

1 Frontier," you mean that if you were to see a C in that
2 position of the United fare basis code, that tells you
3 it's fare-related to Frontier, right?

4 A. Based on my observations, um, yes.

5 Q. All right. So let me ask you to turn to another
6 document you created called "Lage Demonstrative C." It
7 should be right next to the other one. Well adjacent to
8 it in your binder.

9 A. (Turns.)

10 Q. Mr. Lage, this is your -- this is also from Exhibit
11 332 and this is your deciphering of the American
12 Airlines fare basis code, right?

13 A. That's correct.

14 Q. And similarly here -- here we see that if we look at
15 the 4th position of the American Airlines fare basis
16 codes, you've identified that as "Carrier Match," right?

17 A. Again that is being used not necessarily to match a
18 fare level or a fare rule, basically as a tool to be
19 competitive with another -- with a specific carrier in
20 their market.

21 Q. All right. And so, for example, when you see "J" in
22 this 4th position of the American Airlines fare basis
23 code, it indicates to you that it's a fare action
24 American is taking that relates to something JetBlue has
25 done, right?

1 A. That's correct. Based on my observations at the
2 time, most fares that have this character, um, it
3 appeared to me they were related to a competitive filing
4 with JetBlue.

5 Q. All right. And so, Mr. Lage, it's your
6 understanding that, for example, this character "J,"
7 that doesn't relate to any specific term or condition of
8 sale associated with the fare, right?

9 A. It does not tell me anything about selling, um,
10 availability, or anything else, it just basically gives
11 me a clue as to what I may be looking at as far as an
12 initiative by American Airlines.

13 Q. But this is just a cosmetic component of a fare
14 basis code as American has constructed it, right?

15 A. It's not only cosmetic, it could be administrative
16 as well. These characters, um -- working for legacy
17 carriers myself, will help us process fares in a faster
18 manner when we're doing our market maintenance.

19 Q. And in terms of transmitting information that would
20 be relevant to a consumer, again it's not related to any
21 term or condition of sale, right?

22 A. It would not be as far as fare restrictions, it
23 wouldn't have anything to do with fare restrictions for
24 a consumer, no.

25 Q. Mr. Lage, it's fair to say that seeing these types

1 of codes can help you understand the strategic purpose
2 of a fare action, right?

3 A. That's one of the things that I would use that code
4 for, yes.

5 Q. And so just to take an example. If you were to see
6 JetBlue file a fare increase in one transmission and
7 then observe American filing a fare increase in the next
8 transmission with J in the 4th position, that would
9 provide you with an indication that United -- that the
10 American increase may be related to the JetBlue
11 increase, right?

12 A. So based on my observations about what I would
13 expect to see, that if I analyzed that data further and
14 compared fare levels, compared fare rules, it would more
15 than likely be associated with a JetBlue competitive
16 initiative, yes.

17 Q. And for another example, Mr. Lage, if you were to
18 see say J in the fare basis code of American, that you
19 believed was a cross-market initiative, seeing that J
20 would help you evaluate whether or not the American
21 cross-market initiative is related to a fare action by
22 JetBlue, right?

23 MR. NAGLEY: Objection, your Honor. Foundation.

24 THE COURT: No, overruled. He's exploring the
25 issue.

1 A. Could you repeat the question again please?

2 Q. Sure. Well let me shift to a United example.

3 Let's suppose, as we were seeing before, that you
4 saw "H" in the 6th position of the United fare basis
5 code, and you had reason to think that this fare may be
6 a cross-market initiative by United. Seeing that "H" in
7 the 6th position of the United fare basis code can help
8 you evaluate whether or not that is a fare -- is a
9 cross-market initiative that's directed at JetBlue,
10 right?

11 A. So in my analysis, in my observation, if I were to
12 decide that -- it is a cross-market initiative, as you
13 mentioned, that would give me an indication to -- where
14 to look further to try to understand what the action is
15 about. But I would have to assume that my observation
16 that this is a cross-market initiative would be
17 accurate.

18 Q. Fair enough, Mr. Lage. But this would provide you
19 with another clue to start looking at fares that might
20 be related to JetBlue markets that United had filed,
21 right?

22 A. Exactly. This cheat sheet gives me kind of like a
23 step of, um -- more efficiency than me analyzing the
24 hundreds of fares that I need to -- the thousands of
25 fares that I need to look at on a daily basis.

1 Q. Mr. Lage, you can put that demonstrative aside. And
2 let me ask you about another element in your -- in
3 Exhibit 332, in this tool you created.

4 Mr. Lage, um -- so I want to talk a little bit
5 about footnotes.

6 And just to step back for a moment. Fares may
7 have footnote designators associated with them, right?

8 A. That's correct.

9 Q. A footnote designator is a 1 or 2 character
10 alphanumeric code, right?

11 A. That's correct.

12 Q. And the same footnote designator could be used for
13 multiple fare basis codes and across multiple markets,
14 right?

15 A. Could you repeat that again?

16 Q. Sure.

17 The same footnote designator could be used for
18 multiple fare basis codes and it can also be used to
19 cross multiple markets, right?

20 A. That's correct. And for multiple filings as well.

21 Q. And so the footnote designator can help you link a
22 single fare action across multiple markets, right?

23 A. It associates a lot of fares into one group that I
24 can then analyze much easier, yes.

25 Q. So let me ask you to turn to another demonstrative

1 that we've prepared, and this is, um --

2 (Pause.)

3 MR. DOIDGE: Excuse me, your Honor.

4 (Pause.)

5 Q. Lage Demonstrative E. Thank you.

6 A. (Looks.)

7 MR. DOIDGE: Your Honor, Lage Demonstrative E is

8 taken from the first tab of Exhibit 332.

9 A. (Looks.)

10 Q. And, Mr. Lage, this reflects -- this reflects your
11 effort to track footnote designators that other carriers
12 are using, right?

13 A. That's one of the uses of this document that I
14 prepare for myself, yes.

15 Q. And you're examining these footnotes to better
16 understand the fare actions of other airlines, right?

17 A. Among other things, that's one of the possibilities,
18 yes.

19 Q. And here you are tracking the footnotes of American,
20 Delta, Southwest, United, and JetBlue, correct?

21 A. (Looks.) That's correct.

22 Q. And among other things, one of the things you would
23 try to do in this exercise is to identify whether or not
24 a footnote is associated with the cross-market
25 initiative, right?

1 A. Cross-market initiatives, substructure fares, core
2 structures, it depends on the use of the footnote,
3 that's what I try to remark just to get myself a, um --
4 again this is a cheat sheet that I use on a daily basis
5 for analysis.

6 Q. And cross-market initiatives, whether or not a
7 footnote is associated with a cross-market initiative is
8 one of the things that you're trying to identify here,
9 right?

10 A. Yes, if it's at the time that I do the review, that
11 footnote happens -- in my observation happens to be what
12 I think is a cross-market initiative, I would remark it
13 in my document, yes.

14 Q. You can put that -- you can put that exhibit aside.

15 So let me ask you just to -- let's talk about one
16 more example of a cross-market initiative that you
17 observed. And so I would ask you to turn to Tab AEF in
18 your binder.

19 A. (Turns.) Okay.

20 Q. AEF is an e-mail that you sent on September 16th,
21 2021, right?

22 A. Yes, that's correct.

23 Q. And in your e-mail you're informing the team about
24 cross-market initiatives that have been filed by Delta
25 and United that affect some Spirit nonstop markets,

1 right?

2 A. If I can take a minute to read it just to confirm
3 that, please?

4 Q. Go ahead.

5 A. (Reads.) Okay.

6 Q. And do you recall the question?

7 A. No, if you could repeat that please.

8 Q. In your e-mail you were informing your team about
9 cross-market initiatives that had been filed by Delta
10 and United that affect some Spirit nonstop markets,
11 right?

12 A. Yes.

13 MR. DOIDGE: Your Honor, plaintiffs moves that
14 Exhibit AEF be admitted in evidence as Exhibit 794.

15 THE COURT: No objection?

16 MR. NAGLEY: No objection, your Honor.

17 THE COURT: AEF is admitted, Exhibit 794.

18 (Exhibit 794, marked.)

19 Q. Mr. Lage, let me ask you to turn to the second
20 paragraph in your e-mail.

21 A. (Turns.)

22 Q. And there -- excuse me, in the second sentence in
23 the e-mail at 9:28 a.m.

24 A. (Turns.)

25 Q. And there you explain that the cross-market

1 initiatives filed by Delta and United may be at levels
2 close to or below Spirit fare levels in the market,
3 correct?

4 A. That's correct. But to be a little bit more
5 specific, I was -- file fare levels.

6 Q. Fare enough, Mr. Lage.

7 Now if you turn to the next sentence you write
8 that -- you write, quote, "To make sure these levels are
9 not used as guidance as they will eventually be
10 cancelled in ways to normal market levels by these
11 carriers," right?

12 A. That's correct.

13 Q. Your expectation at the time was that the fares
14 would be withdrawn, right?

15 A. My expectation is when it is proven that it is a
16 cross-market initiative, these fares tend to have a
17 short life span and they could last for hours, a day,
18 and sometimes over a week.

19 Q. Mr. Lage, let me also ask you. If you look down at
20 the next sentence, you're identifying the footnote that
21 United has used for its cross-market initiatives, but no
22 K, right?

23 A. Based on my observations at the time, that that
24 would be accurate, yes.

25 Q. And if we look below, you've listed a set of markets

1 where United has filed what you thought was a cross-
2 market initiative, right?

3 A. Those are the markets that, according to my
4 analysis, and based on the footnote and the filing
5 advice from ATPCO, I was able to carve out from the data
6 that I received from the ATPCO database.

7 Q. And each of those markets involve a Delta hub,
8 right?

9 A. (Turns.) Yes, it appears to be a Delta hub.

10 Q. All right. You can put that document aside.

11 Let me just ask more broadly about what you
12 observed regarding airlines' uses of cross-market
13 initiatives.

14 Now you've observed that each of the three legacy
15 airlines and Southwest, you've observed them using
16 cross-market initiatives, right?

17 A. I would say the legacies and Southwest Airlines are
18 the ones that, um -- and every time I come across a
19 cross-market initiative filing, it's either legacies or
20 Southwest Airlines.

21 Q. It's not every time, right, Mr. Lage, because you've
22 also observed JetBlue filing cross-market initiatives,
23 right?

24 A. I did observe JetBlue at one time, um, since I've
25 been at Spirit, file a -- what I would consider a cross-

1 market initiative, but, um, after further analyzing the
2 data I realized that, um, it didn't pan out as I
3 expected it to pan out for a cross-market initiative
4 fare because it eventually became part of that fare
5 structure for JetBlue in the market.

6 Q. And, Mr. Lage, let me ask you to turn to your
7 deposition transcript in your binder.

8 A. Okay.

9 Q. And look at Volume 1. I ask you to turn to Page
10 179.

11 A. (Turns.)

12 Q. Actually, sir, if you'd go to the top of Page 180,
13 Mr. Lage.

14 A. I'm on Page 179.

15 Q. You can turn to the top of Page 180, and look at
16 Line 1.

17 A. Okay.

18 Q. And there's the question.

19 "So let me ask, Mr. Lage, have you also observed
20 JetBlue filing cross-market initiatives?" Answer, "I
21 would say that I have, yes."

22 A. That's correct.

23 Q. Is that the question and answer? Is that the answer
24 that you gave in your deposition?

25 A. Yes.

1 Q. And was that answer truthful?

2 A. Yes.

3 Q. Mr. Lage, Spirit doesn't file cross-market
4 initiatives, right?

5 A. As I mentioned before, at one time I did observe a
6 filing by --

7 Q. I'm not asking about JetBlue. Well let me step
8 back.

9 A. Okay.

10 Q. Switching topics.

11 Spirit doesn't file cross-market initiatives,
12 right?

13 A. Not that I have observed. But I do not -- I don't
14 -- I'm not involved in the filing of fares, I'm involved
15 more in the observation of other airlines' filings. So
16 to my understanding we do not file -- we're not involved
17 in cross-market initiative filings in general, but I'm
18 not involved in the process of filing fares and what
19 their reasoning behind the filings are.

20 Q. All right. And you don't typically observe other
21 airlines filing cross-market initiatives that you
22 believe are directed towards Spirit, right?

23 A. I don't believe that I have specifically observed
24 that.

25 Q. You do see them being filed in markets that Spirit

1 serves nonstop though, right?

2 A. I have seen that, yes.

3 Q. And one clue to help you decipher that it's not
4 directed -- that cross-market initiative isn't directed
5 at Spirit, is by looking at other markets where you see
6 that cross-market initiative occurring, right?

7 A. That's correct. Time permitting I try to understand
8 if the filing is a cross-market initiative and what
9 markets are involved in our network.

10 Q. But, for example, if you see United fares, we just
11 saw in a Spirit nonstop market, but also see that same
12 fare basis code filed in Delta nonstop markets, that
13 gives you -- that indicates to you that the cross-market
14 initiative is likely directed at Delta, right?

15 A. I would have to -- like I said, it depends on how
16 much time I spend on analyzing that filing, um, but --
17 and what those fare levels are. So without the data in
18 front of me -- but I need to look at the data to
19 understand if the markets involved are because of
20 competitive issues with a specific carrier, whether it's
21 Spirit or any other carrier.

22 Q. I appreciate that, Mr. Lage. But that's a clue you
23 look for, right?

24 A. That's correct.

25 Q. And another clue that you look for is if you see the

1 same exact fare level, the dollar amount filed in other
2 markets, right?

3 A. That would be one observation I look for as well,
4 yes.

5 Q. All right. Mr. Lage, let me ask you to, um, turn --
6 on a slightly different topic, if you could turn to Tab
7 AEC in your binder.

8 A. (Turns.) That's "E" as in "echo"?

9 Q. Yes, "Alpha" "Echo" "Charlie."

10 A. (Turns.)

11 Q. Are you there?

12 A. Yes, I am.

13 Q. This is a chat that you had with Rafael Weiner on
14 July 15th, 2021, right?

15 A. That's correct.

16 Q. And at the time Mr. Weiner was a pricing analyst
17 that reported to you, right?

18 A. Yes, he was.

19 MR. DOIDGE: Your Honor, plaintiff moves that AEC
20 be admitted in evidence as Exhibit 795.

21 THE COURT: No objection?

22 MR. NAGLEY: No objection.

23 THE COURT: AEC is admitted, Exhibit 795.

24 (Exhibit 795, marked.)

25 Q. Mr. Lage, let me direct your attention to the chat

1 that you placed at 7:17 p.m.

2 A. Okay.

3 Q. And there you note that JetBlue is trying to
4 possibly get American to place the last ticket date on
5 its fare, right?

6 A. Yes, that's what I wrote.

7 Q. And, Mr. Lage, you'd agree that the use by another
8 airline of a last ticket date could be a way for an
9 airline to suggest a fare action to another airline,
10 correct?

11 A. Could you repeat that question again?

12 Q. Sure.

13 The use by another airline of a last ticket date
14 could be a way for an airline to suggest a fare action
15 to another airline, right?

16 MR. NAGLEY: Objection, your Honor.

17 THE COURT: Would you ask that question again?

18 MR. DOIDGE: Yes, your Honor.

19 Q. Mr. Lage, you'd agree that the use of a last ticket
20 date by an airline could be a way to suggest a fare
21 action to another airline?

22 THE COURT: No, overruled, he may have that
23 question, if the witness can answer.

24 A. I have no way of knowing the intentions of another
25 airline when they put a last ticket on a fare. They

1 could possibly be using that fare level for a sales
2 promotion or some other initiative. That may not be a
3 cross-market initiative or anything else. I have no way
4 of knowing that.

5 Q. Mr. Lage, let me ask you to turn again to your
6 deposition transcript at Page 197.

7 A. (Turns.)

8 Q. If you could turn to the bottom of the page at Line
9 20.

10 A. Okay.

11 Q. The question is, "When assessing whether or not
12 another carrier is possibly trying to suggest a fare
13 action to another carrier, what sorts of things do you
14 look for?" Answer, "Well that would be one specific
15 example there. Last ticket date could be placed. The
16 fare could be filed in more than one market. So if
17 that's -- let's say JetBlue in this case, taking their
18 example, they could put that fare in Newark as well,
19 being that they may consider New York and Newark as
20 sister cities. They may say 'Okay, if we're going to
21 put it in New York, we need to put it in Newark as
22 well.' So there's a lot of different things that you
23 can look at to see what the true intent might be. At
24 the end of the day, it's just my opinion and my analysis
25 of what I'm seeing."

1 Is that the question you asked and the answer you
2 gave?

3 A. Correct.

4 Q. All right, you can put that document aside,
5 Mr. Lage.

6 So, Mr. Lage, one of the fare activities that you
7 observe at times is something called "fare increase
8 initiatives," right?

9 A. Yes.

10 Q. And by a "fare increase initiative," you have in
11 mind that an airline has increased the fare level of a
12 single fare and group of fares in an origin and
13 destination market, right?

14 A. Correct.

15 Q. And one of the things you're monitoring is how the
16 other airlines respond to that fare increase initiative,
17 right?

18 A. Yes.

19 Q. Let me ask you to please turn to Tab AEI in your
20 binder.

21 A. (Turns.) Okay.

22 Q. Mr. Lage, AEI is a chat between you and Mr. Weiner
23 and Mr. Jensen on January 22nd, 2021, right?

24 A. That's correct.

25 Q. The chat is discussing fare actions by other

1 airlines from New York airports to destinations in
2 Florida, right?

3 A. If I can take a minute to read it?

4 Q. Okay.

5 A. (Reads.) Okay.

6 Q. Mr. Lage, again the question. The chat is
7 discussing the fare actions by other airlines in routes
8 from New York airports to destinations in Florida,
9 right?

10 A. New York and Newark, New Jersey as well.

11 Q. All right.

12 MR. DOIDGE: Your Honor, the plaintiff moves that
13 Exhibit AEI be admitted in evidence as Exhibit 796.

14 THE COURT: No objection?

15 MR. NAGLEY: No objection.

16 THE COURT: AEI is admitted, Exhibit 796.

17 (Exhibit 796, marked.)

18 Q. In the chat in Mr. Weiner's message at 10:21 p.m.,
19 he notes that "American hadn't followed United in
20 canceling fares," right?

21 A. Yes.

22 Q. And you reply that "It will take more than one
23 Domino to fall for some success," right?

24 A. Yes.

25 Q. And if we look below that, Mr. Weiner responds, that

1 it could be that -- "It could be that they," referring
2 to American here, right?

3 A. I have no way of -- what the intention that day?
4 It's not very specific to me. So I don't know by
5 "they," he means one, two airlines, three airlines, it's
6 not clear to me what he's trying to convey in this
7 message.

8 Q. Mr. Lage, Mr. Weiner wrote, and I'll just read it,
9 "It could be that they are remaining because of us. The
10 legacies may see us as the lowest common denominator. I
11 know WN saw it that way." Correct, that's what
12 Mr. Weiner wrote?

13 A. That's what he wrote, yes.

14 Q. And he asked for first Spirit, right, that much you
15 understand?

16 A. (Reads.) Yes, I would assume "us" being Spirit
17 Airlines.

18 Q. Mr. Lage, let's look at what happened a week later.
19 Please turn to Exhibit 449 in your binder.

20 A. (Turns.)

21 MR. DOIDGE: And this is already in evidence.

22 Q. Mr. Lage, this is your Price and Activity Report
23 from January 20th, 2021, correct?

24 A. That's correct.

25 Q. And if you could turn your attention towards the

1 bottom of the first page, you have a section under the
2 heading "Increases," right?

3 A. Yes.

4 Q. And there you were describing a fare increase action
5 that you observed JetBlue taking, right?

6 A. That's correct.

7 Q. And this action also involves New York -- routes
8 from New York airports to destinations in Florida,
9 right, including Newark?

10 A. That's correct.

11 Q. And those are Florida cities -- these routes are
12 routes that Spirit serves nonstop, right, from one or
13 more of the New York airports?

14 A. Some of them are nonstop, yes.

15 Q. And focusing on the last sentence you write on the
16 page, there you write, "As with JetBlue's previous
17 increase initiative filed last week, this will encounter
18 pushback from American, United, and Delta, as these
19 carriers are reluctant to increase their own ULCC
20 structures," right?

21 A. Right. So the legacy carriers have specific ULCC
22 structures, so most often they'll want to remain
23 competitive with each other with these structures. So
24 that's basically what I'm trying to communicate in that
25 sentence.

1 Q. And Spirit again operates in those markets, right?

2 A. In some of those, yes.

3 Q. And in this case again, as you observed in the
4 prior -- in the chat just a week earlier, Spirit is the
5 "lowest common denominator," right?

6 A. The "lowest common denominator" meaning for other
7 airlines filing their fares?

8 Q. It's your statement, Mr. Lage, that's what you
9 wrote, right?

10 A. Well I wouldn't necessarily say that legacy
11 carriers, their only focus on filing low fares would be
12 based on Spirit Airlines's, um, fare levels.

13 Q. Mr. Lage, I'm focused on this particular -- this was
14 your observation at this point, correct?

15 A. Yes.

16 MR. DOIDGE: I pass the witness.

17 (Pause.)

18 MR. NAGLEY: Just a moment, your Honor?

19 THE COURT: Of course.

20 (Pause.)

21

22 CROSS-EXAMINATION BY MR. NAGLEY:

23 Q. Good morning, Mr. Lage.

24 A. Good morning, counsel.

25 Q. Could you tell the Court when you started working in

1 the airline industry?

2 A. I started working in the airline industry in 1978.

3 Q. Could you briefly tell the Court how you got
4 interested in the airline industry?

5 A. So, um, my interest in aviation in general, um,
6 became apparent once I immigrated to the United States
7 and took my first flight, and from that moment, from
8 that point on, it was just a passion that, um --- that
9 still exists actually.

10 Q. And what was your first job in the industry?

11 A. Um, I started as a reservation sales agent for
12 Northwest Airlines in 1978.

13 Q. And we've heard a lot about your experience in
14 pricing, but what sort of jobs have you done in the
15 airline industry over your time?

16 A. How much time do we have? (Laughter.) So I've
17 done, as I mentioned, a reservation sales agent. I've
18 worked at the airport as well, um, the ticket counter,
19 um, boarding passengers, working, um, outside loading
20 and offloading the aircraft, deicing the aircraft. I've
21 worked in the cargo operations for airlines as well. I
22 have been a station trainer and I've done pricing for
23 the airlines. Pretty much everything you can think of
24 except flying the aircraft, which I still have time to
25 do if I -- (Laughter.) If I can do it.

1 Q. I believe you can, Mr. Lage.

2 When did you start working at Spirit?

3 A. I started working at Spirit Airlines in 2017.

4 Q. And can you remind the Court, what's your current
5 title?

6 A. Currently I'm the pricing -- the Senior Pricing
7 Manager for the Pricing Technical Team.

8 Q. And who do you currently report to at Spirit?

9 A. I currently report to Eric Monahan, who's the Vice-
10 President of Pricing and Revenue Management.

11 Q. And at a high level, and it would be helpful, if you
12 would explain what the function is of Pricing and
13 Revenue Management at an airline?

14 A. So in most of the airlines that I've worked, there
15 are two specific groups. One group handles the filing
16 of fares structure for a specific market, and the --
17 what the other group is responsible for is deciding, out
18 of those fare levels that are filed in a specific
19 market, the structure, what fare levels to make
20 available for the customer to purchase.

21 Q. So if you could expand a little bit, because I think
22 it would be helpful, what's the difference between a
23 "filed fare" and a "selling fare"?

24 A. So the best way I can describe that is, um, if
25 you, as a consumer, are walking into a store to purchase

1 a specific product, the file fare would be equivalent to
2 you walking into the store and there's 10 shelves of the
3 same product, each shelf price, let's say it's \$10 every
4 shelf, from 10 to 100, that is the file fare. You may
5 walk in and find that only the bottom three shelves do
6 not have the product, meaning that that store wants to
7 charge you \$40 for their product. You may come back 2
8 hours later and that \$10 shelf may be stocked and you'll
9 be able to buy it for \$10. So that's as basic as -- I
10 just wanted to explain the complexity of filing a fare
11 as opposed to making a fare available for purchase by a
12 consumer.

13 Q. And how do your responsibilities on the Pricing
14 Technical Team relate to what you just described about
15 the difference between filing and selling fares?

16 A. My responsibilities are basically to gather tactical
17 information on what other competitors are doing in my
18 network and relate that information to the revenue and
19 pricing analysts so they can better decide what fares to
20 file and what fares to make available to purchase at the
21 time.

22 Q. All right, changing subjects a little bit, Mr. Lage.

23 The government asked you, today and yesterday a
24 little bit, about Pricing Activity Reports. Do you
25 remember that conversation?

1 A. Yes.

2 Q. Um, can you just remind us again what a Pricing
3 Activity Report is?

4 A. So the Pricing Activity Report is a report that I
5 compose every weeknight, and sometimes on weekends, and
6 it basically includes high-level summarization of fare
7 initiatives, um, by other airlines in our network. Some
8 of those initiatives could be related to sales increases
9 and other pertinent information that we should know in
10 order to make better decisions.

11 Q. And what information do you review in preparing
12 these reports?

13 A. The information is basically taken from the ATPCO
14 data that we receive on a daily basis four times a day
15 and once on the weekends.

16 Q. As you mentioned earlier, again "filed fares" versus
17 "selling fares."

18 What type of fares do you report on in your
19 Pricing Activity Reports?

20 A. What type of fares?

21 Q. What type of fares.

22 A. Um, the type of fares that I report on is basically
23 the filed fares for other carriers.

24 Q. And when did you first start preparing Pricing
25 Activity Reports?

1 A. I started preparing those shortly after I started
2 working with Spirit Airlines in 2017.

3 Q. And how often do you write these reports?

4 A. Um, I write them every weeknight and at times on the
5 weekends as well.

6 Q. So what is your best estimate of how many Pricing
7 Activity Reports you've prepared during your time at
8 Spirit?

9 A. Um, based on my time with Spirit and quick math, I
10 would say over 1500 fares -- sorry, over 1500 reports
11 have been sent out.

12 Q. And the government's shown you under 5 today?

13 A. I didn't count, but it sounds pretty accurate.

14 Q. Now let me ask you about another report that you
15 prepare.

16 Can you tell the Court what a 037 AP report is?

17 MR. DOIDGE: Your Honor, objection, it's outside
18 the scope.

19 THE COURT: It is, but, um --

20 MR. DOIDGE: And he's not on their witness list.

21 THE COURT: Well let's see. You called him as an
22 adverse witness and therefore -- all right. We've
23 talked about this.

24 What do you say to that?

25 MR. NAGLEY: I say that we -- in our agreement we

1 said anyone they put on the report we could call. And
2 I'm not leading the witness and --

3 THE COURT: No, you're not. No, you're not. The
4 question is whether it's now or later? The man's here.
5 But you don't get to put your case in in the middle of
6 their case, save by agreement, and they don't agree. So
7 it's beyond know the scope and, um, he's an adverse
8 witness, so my instinct is to sustain the objection
9 without -- we're going to hear from him later then, he's
10 just going to come back.

11 But that's what you prefer?

12 MR. DOIDGE: Yes, your Honor.

13 THE COURT: Very well.

14 MR. COHEN: Your Honor, may I be heard?

15 THE COURT: Yes.

16 MR. COHEN: We have an agreement with the
17 government that we can --

18 THE COURT: The agreement has to be in writing.

19 MR. COHEN: It is in writing.

20 THE COURT: Well fine. And now I have to have it
21 before me and then I'll interpret it.

22 MR. COHEN: The case management order provides
23 that any witness --

24 THE COURT: Well someone's got to give it to me
25 now.

1 MR. COHEN: Yes, your Honor.

2 (Pause.)

3 MR. DOIDGE: We'll withdraw, your Honor.

4 THE COURT: Withdrawn. All right. The government
5 withdraws the objection. Fine.

6 Go ahead.

7 MR. NAGLEY: Yes, sir. Thank you, your Honor.

8 Q. Mr. Lage, I'll try the question again, I know a bit
9 of time has passed.

10 Can you explain to the Court what one of the
11 reports you prepare, which is a 037 AP report, what is
12 that?

13 A. So a 037 report, or you may see it named as a
14 "Closed-End Report," has to do with fare categories that
15 have 0 events they purchase, 3-day events they purchase,
16 and 7-day events they purchase. We highly focus on
17 those fares, and so every morning, every weekday in the
18 morning I would send out a report that would give us a
19 high-level view of the filed fares that other
20 competitors were filing -- the lowest filed fares that
21 other competitors were filing in our market, in our
22 nonstop markets.

23 Q. And why did you prepare these reports?

24 A. The reason for me preparing that report is to give
25 the analysts in the Revenue and Pricing Team that set --

1 that file the fares and set what fares need to be sold,
2 at what level, um, a better understanding and guidance
3 as to, um, help them out and make those decisions on a
4 daily basis.

5 Q. And what do the 037 AP reports show about the lowest
6 available fare for purchase on any given day?

7 A. The report has -- shows nothing about availability
8 or available fares in the market.

9 Q. What does this report show about the number of seats
10 available at the lowest-filed fare?

11 A. No availability information for a specific market in
12 that report at all.

13 Q. And what does this report show about any
14 restrictions that are put on the lowest-filed fare?

15 A. It's very simple, it shows no restrictions, um,
16 regarding the fare rules or days-of-the-week travel.
17 None of that.

18 Q. And how often are Spirit's lowest-filed fares the
19 same as Spirit's available fares?

20 A. I have -- the question again?

21 Q. How often are Spirit's lowest-filed fares the same
22 as Spirit's available fares?

23 MR. DOIDGE: Objection, foundation, your Honor.

24 THE COURT: No, if he knows the answer, he can
25 answer.

1 A. I have no way of determining that.

2 THE COURT: Well that's your answer. Thank you.

3 Q. And why can't you answer that question?

4 A. I just don't have the tools or the news to know
5 exactly when that happens -- or when it happens.

6 Q. And why would you not have the tools to know what
7 the lowest available -- the lowest selling fare was?

8 MR. DOIDGE: Objection, your Honor.

9 THE COURT: No, overruled.

10 A. Why wouldn't I have the tools?

11 Q. Um-hum.

12 A. Because in my job I don't -- that's not a tool that
13 I work with. In my job I'm just analyzing filed fare
14 levels, I'm not looking at what is actually selling in a
15 market.

16 Q. And when did you start preparing the 037 AP reports?

17 A. That report was also created shortly after I started
18 working for Spirit in 2017 and it was sent out every
19 weekday, um, until earlier this year when I dropped it
20 off, my responsibilities.

21 Q. Why did you stop preparing this report earlier this
22 year?

23 A. Um, it became apparent that we had obtained better
24 tools known as "scraping tools" where the revenue and,
25 um, pricing analyst had a better idea what actually was

1 selling in a market based on any given day or a week,
2 um, for specific fare levels as well. So my report
3 became kind of redundant and not really as helpful as I
4 thought it would be.

5 Q. And would these scraping tools allow Spirit's
6 pricing and revenue analysts to see fares that were
7 selling in both the public and private --

8 A. It would allow them to see anything, public or
9 private as well. Anything that was in the other
10 airlines' website for the customer to purchase would be
11 seen on that scraping tool, yes.

12 Q. And what is your best estimate of how many 037 AP
13 reports you've prepared during your time at Spirit?

14 A. Math again. Okay. So I say with my time at Spirit,
15 I would say over 1200 reports were sent.

16 Q. Okay, turning now to a subject the government's
17 asked you a lot about today and yesterday, cross-market
18 initiatives. So I want to cover some ground again.

19 In your 6-plus years at Spirit, what airlines have
20 you observed engaging in what you believe to be
21 cross-market initiatives?

22 A. They would be the legacy carriers and Southwest
23 Airlines.

24 Q. And what firsthand knowledge, if any, do you have
25 about why the legacies and Southwest engage in fare

1 actions that you perceive to be cross-market
2 initiatives?

3 A. No firsthand knowledge, it's basically based on my
4 observations and experience.

5 Q. Have you ever attempted to contact any other airline
6 to confirm that their fare action was a cross-market
7 initiative?

8 A. That's a "No."

9 Q. Have you ever changed your mind about whether a fare
10 action was a cross-market initiative?

11 A. Many times.

12 Q. And why would you change your mind?

13 A. Again because in the original filing the first
14 impression, um, is that it appears to be a cross-market
15 initiative and at times I've analyzed deeper into the
16 initiative filed by that airline, and eventually, um,
17 they -- they're buying those fares remain as part of a
18 specific structure or substructure in the market.

19 Q. And what information do you review, um, for your
20 observations that other airlines' fare actions might be
21 cross-market initiatives?

22 A. The information is basically, um, taken from the
23 data I received from ATPCO.

24 Q. And to what extent do you include your observations
25 about cross-market initiatives in any reports you

1 prepare?

2 A. So whenever I observe these initiatives, um, they
3 become part of my Pricing Activity Report, which I sent
4 out, um, every weeknight, at times on weekends as
5 mentioned, and they're also included in the 037 or
6 Closed-End report, which used to be sent, until
7 recently, every morning on weekdays. And at times I
8 would, via e-mail, alert the specific market analysts,
9 the pricing revenue management analysts, about the
10 filing.

11 Q. So how long can the fare actions that you perceive
12 to be cross-market initiatives last?

13 A. It could be anywhere from hours within the same day,
14 um, it could last for a few days, sometimes over a week.

15 Q. And how if at all can a single cross-market
16 initiative change over time?

17 A. So there's multiple ways that initiative can be
18 changed and the two most common ways would be either for
19 the market scope to change, become smaller or larger, or
20 it could be based on fare-level exchanging, either
21 higher or lower, depending on the filing.

22 Q. Now since in your observations cross-market
23 initiatives could last for several days or more than a
24 week, how many times could the same cross-market
25 initiative appear in your reports?

1 A. So if we're looking at the Pricing Activity Report
2 that's sent out every night, that cross-market
3 initiative would be included in the first data that
4 initiative is filed, that I observe to be filed, would
5 be on that report. If there were any changes after
6 that, after a few days I would report it again. And
7 then eventually, until the market initiative was
8 cancelled out of our network, then I would report it in
9 that report as well.

10 In the 037 or Closed-End report, um, that was sent
11 out until earlier this year, that cross-market
12 initiative fare level would be there from the first day
13 it's filed. It would stay throughout that report every
14 day, it will come up, that fare level will come up every
15 day in that report, um, until there was any changes in
16 the fare level, and eventually until the fare was
17 canceled.

18 Q. So in the well-over 1500 Pricing Activity Reports
19 you have prepared, how often have you noted the
20 existence of what you believe to be a distinct cross-
21 market initiative?

22 A. Very rarely. I would say I've come across maybe
23 once a month.

24 Q. And let's get to a subject that the Department of
25 Justice asked you about specifically.

1 In your 6-plus years at Spirit, how often have you
2 seen JetBlue engaging in what you believe to be a cross-
3 market initiative?

4 A. Again, so I observed JetBlue file what I appear to
5 consider a cross-market initiative at the time, but it
6 turned out it was not a cross-market initiative based on
7 the results of how that fare behaved through the days.

8 Q. And how did you determine that the JetBlue fare was
9 not a cross-market initiative?

10 A. The way I determined that is because eventually that
11 fare became part of the JetBlue structure as a
12 competitive fare to other airlines in that market.

13 Q. Okay. Other than that one time when you observed
14 what you thought was a cross-market initiative by
15 JetBlue, how many other times have you observed JetBlue
16 engage in what you believe to be a cross-market
17 initiative?

18 A. I have not observed any other filings as such for
19 JetBlue.

20 Q. Thank you, Mr. Lage.

21 MR. NAGLEY: Just a moment, your Honor.

22 (Pause.)

23 Q. Mr. Lage, can I turn your attention please to what
24 the government's marked as Lage Demonstrative E.

25 A. (Looks.)

1 Q. And, Mr. Lage, you testified earlier that
2 Demonstrative E provides an overview of footnotes that
3 you believe were associated with some of Spirit's
4 competitors, is that correct?

5 A. Yes.

6 Q. And just to be clear about its provenance, you
7 testified that this demonstrative is based on a document
8 you create called "OA Structural Review," is that
9 correct?

10 A. That would be accurate, yes.

11 Q. And who do you distribute OA Structural Review to?

12 A. This is my report that is distributed, this is a
13 personal report that I use as a, um, cheat sheet or
14 reference to help me analyze data much quicker.

15 Q. And, Mr. Lage, could you tell the Court how you use
16 the "Remarks" column in the document?

17 A. The "Remarks" column is basically giving me an
18 indication of, um, what to look for. If I receive data
19 -- and we receive data from ATPCO on a daily basis, on
20 average 4 million fares have to be reviewed, and if I
21 see a large filing for a specific airline that has a
22 specific footnote associated with it, I can quickly go
23 to this cheat sheet in reference and it will give me an
24 indication of what to look for in my analysis and it
25 saves me time throughout the day.

1 Q. So let's walk through this just a little bit.

2 If I could direct your attention to Rows 2 through
3 12, what do these rows show?

4 A. So Rows 2 through 12 are showing the American
5 Airlines, um, footnotes that were filed in ATPCO and
6 were being used, in my observations, um, to file
7 initiatives of competitors with other airlines in the
8 American Airlines network.

9 Q. And looking at the Remarks column, can you identify
10 rows that record your observations of footnotes that
11 American used for competition with JetBlue?

12 A. Yes, I can. So Row Number 9, at the time that I
13 made this review, American was using Footnote B3 to file
14 competitive fares to compete with JetBlue in their
15 network.

16 Q. So you observed American using one footnote for
17 competition with JetBlue, correct?

18 A. That would be accurate, yes.

19 Q. Next I'd like to direct your attention to Rows 13
20 through 41, please.

21 A. (Turns.)

22 Q. Would you tell the Court what these rows show?

23 A. So these rows are showing me the footnotes that
24 United had filed in ATPCO that were associated with, um,
25 fares that United was filing to what I observed to be

1 competitor fares versus other airlines in the United
2 Airlines network.

3 Q. And can you identify rows that record your
4 observations of footnotes that you might have used for
5 competition with JetBlue?

6 A. So the first one, um, if you go to Row, um, 29, in
7 my observation United was using Footnote BE to match,
8 um, specific competitive fares with JetBlue in their
9 network. (Looks.) Rows 34, United was using H2 at the
10 time to match and file fares competitive to JetBlue in
11 the network as well. Row 35, United was using Footnote
12 JK to match JetBlue's fares in the network. Going down
13 the line. 38, United was using footnote NE to match
14 JetBlue. 39, United was using Footnote NR to match
15 JetBlue substructure. And Row 40, United was also using
16 Z5 to match JetBlue.

17 And just to be clear, when I say "match," again
18 it's not an exact match, but it's a filing that is
19 competitive with some sort of fare that JetBlue had in
20 their structure in the market.

21 Q. And then I know the font is smaller, so maybe it's
22 better on your screen, Mr. Lage, but I would also ask
23 you to look at, um, if you could tell me what Row 31
24 indicates to you?

25 A. 31?

1 Q. Yes.

2 A. Yeah, that's another footnote that United was using
3 to match JetBlue.

4 Q. And so United used 7 footnotes for competition with
5 JetBlue according to your observations, correct?

6 A. Yes.

7 Q. Let's now look at Rows 42 to 59.

8 A. (Turns.)

9 Q. What do these rows show?

10 A. Okay. So this would be Southwest Airlines, um,
11 footnotes that were filed in ATPCO at this time to file
12 fares associated with other carriers in the Southwest
13 network.

14 Q. And can you identify rows that record your
15 observations of footnotes that Southwest used for
16 competition with JetBlue?

17 A. So Row 43, um, Southwest at the time was using
18 footnote 1B to match, um, filed competitive fares with
19 JetBlue. And if you go down to Row 59, Southwest was
20 using Footnote H2 to file competitive fares with
21 JetBlue, in their network.

22 Q. So Southwest used two footnotes for competition with
23 JetBlue, correct?

24 A. That would be correct.

25 Q. And then finally, I'd like to direct your attention

1 to Rows 60 to 83 of Demonstrative E?

2 THE COURT: How many times did you perceive that
3 Southwest was using those footnotes?

4 THE WITNESS: At the time that I was reviewing the
5 data, it was just a one-time capture.

6 THE COURT: I understand that.

7 THE WITNESS: Yes.

8 So, um, as far as how many times? It all depends
9 how -- so if we look at the travel dates for each
10 footnote, um, on Row 59, those fares went on till
11 February 15th. So up to that point, if Southwest filed
12 fares with this footnote, I would know right away that
13 they were associated with JetBlue.

14 THE COURT: All right. Thank you.

15 Mr. Nagley, go ahead.

16 Q. And finally I'd like to direct your attention to
17 Rows 60 to 83, Mr. Lage.

18 Could you tell the Court what these rows show?

19 A. Yes. So these are the Delta Airlines footnotes
20 filed in ATPCO to file competitive fares versus other
21 airlines in their network.

22 Q. And the last time for this exercise, Mr. Lage. Can
23 you identify rows that record your observations of
24 footnotes that Delta used to file competitive fares with
25 JetBlue?

1 A. So Row 61, um, I'm showing Delta using Footnote 1P
2 at the time to file competitive fares versus JetBlue.
3 Row 66, I'm seeing Delta using Footnote 4J to file
4 competitive fares versus JetBlue. Row 69, Delta was
5 using Footnote AJ to file competitive fares versus
6 JetBlue in the network. Row 75, um, Footnote B4 used
7 for the same purpose, matching JetBlue and possibly
8 American Airlines in the network. Rows 76, Footnote B7
9 was being used by Delta at the time to file competitive
10 fares with JetBlue. And finally, 77, um, Delta was
11 using Footnote B9 to match what appear to be either
12 Alaska and possibly JetBlue as well.

13 Q. And so Delta used 6 footnotes for competition with
14 JetBlue, according to your observations, correct?

15 A. That would be correct.

16 Q. So, Mr. Lage, you've identified 16 footnotes that
17 you observed American, Delta, United, and Southwest, use
18 for competition with JetBlue, does my math sound right?

19 A. It sounds good, yes.

20 Q. And how many of these footnotes, for any of those
21 four carriers, relate specifically to competition with
22 Spirit?

23 A. Um, none in this document that I can see.

24 MR. NAGLEY: Thank you, your Honor. I pass the
25 witness.

1 THE COURT: Anything further for this witness?

2 MR. DOIDGE: Just very briefly, your Honor.

3 THE COURT: Okay.

4

5 REDIRECT EXAMINATION BY MR. DOIDGE:

6 Q. Mr. Lage, let me ask you to turn to Exhibit 699 in
7 your binder.

8 A. (Turns.) Okay.

9 Q. Mr. Lage, this is an example of one of the 037
10 reports that Mr. Nagley was referring, um, discussing
11 with you, right?

12 A. 037 and the Closed-End are basically the same, yes.

13 Q. And if we could turn to the spreadsheet.

14 A. (Turns.)

15 Q. It's a PDF, I think. If you could just take a look
16 at Row 9 for an example. All right?

17 A. (Turns.)

18 Q. Row 9 is what you were recording with respect to
19 the, um, the Atlanta, Philadelphia market, right?

20 A. Yes, this is showing the filed fare levels for these
21 carriers in our market, yes.

22 Q. And in this particular market Spirit had the lowest
23 fare of \$56, right?

24 A. The lowest-filed fare, yes.

25 Q. And that's well below the lowest-filed fare for both

1 American and Delta of \$183, right?

2 A. It's lower, yes.

3 Q. And you'd understand American and Delta to be
4 offering nonstop service in that market because those
5 involve hubs for those two airlines, right?

6 A. It would be safe to assume that they were offering
7 nonstop service, yes.

8 Q. And you understand that United would only be
9 offering connection service, right?

10 A. That's correct.

11 Q. And even though it is only offering connection
12 service, United is matched exactly with its filed fare
13 of \$183 with American and Delta, right?

14 A. United, like any other airline, filed a
15 competitive fare in the market, yes.

16 Q. And Southwest with respect to -- and we're focusing
17 on the OAP fares there, Southwest has also matched
18 exactly the \$183, right?

19 A. It appears Southwest has filed competitive fares as
20 well, yes.

21 Q. And JetBlue's lowest-filed fare is \$298, right?

22 A. The lowest-filed fare for JetBlue in this market is
23 \$298, that's correct.

24 Q. And just to clarify something, Mr. Lage. It's not
25 possible for the airline, with respect to a OAP fare,

1 for within that window, within that booking window, it's
2 not possible for an airline to actually be selling a
3 fare at a lower level than the filed fare that you're
4 observing here, right?

5 A. Can you repeat the question again?

6 Q. Sure. Let's assume I'm looking to purchase a ticket
7 one day in advance of my travel.

8 A. Okay.

9 Q. So I need to buy a walk-up fare, right?

10 A. Um-hum.

11 Q. Are you with me?

12 A. Yes.

13 Q. It's not possible -- so let's take the JetBlue fare
14 of \$293 -- \$298. It's not possible for JetBlue to offer
15 a lower fare to sell -- to be selling a lower fare on
16 that date than the \$298 that you've identified as a
17 filed fare, right?

18 A. That's correct. \$298 just tells me that's the
19 lowest-filed fare in the market, it's not necessarily --
20 it's not necessarily telling me what JetBlue is actually
21 selling that walk-up or day-of-departure fare level. It
22 could be even greater than 298.

23 THE COURT: You've answered my question.

24 Q. Stepping back, Mr. Lage. We see here American,
25 Delta, United, and Southwest are all lined up at \$183 in

1 that market. And fair to say, Mr. Lage, that in your
2 experience it's not uncommon to see those four carriers
3 lined up with respect to their fare levels, right?

4 A. Again it's very common to see filed fare levels that
5 are lined up because every airline wants to have
6 something competitive in the event that they need to
7 make that fare available.

8 Q. And again, Mr. Lage, if I am a consumer trying to
9 purchase a ticket one day in advance of my travel, I
10 can't buy a ticket for less than \$183 on any of those
11 four airlines, right?

12 A. Based on the data at this time when I make the
13 report, the lowest you could possibly find available for
14 any of these four carriers would be \$183, that's
15 correct.

16 Q. Okay, thank you.

17 MR. DOIDGE: No further questions.

18 THE COURT: Nothing further for this witness?

19 MR. NAGLEY: No, your Honor, thank you very much.

20 THE COURT: All right, you may step down. Thank
21 you.

22 Call your next witness.

23 MR. DUFFY: Thank you, your Honor. We'll be
24 calling Claire Roeschke of JetBlue.

25 THE COURT: She may be called.

1 (Noise in courtroom.)

2 THE COURT: Quiet in here. The Court is in
3 session. You can have all these binder people walk
4 around, but this isn't a recess.

5 (CLAIRE ROESCHKE, sworn.)

6 MS. BALDWIN: Good morning, your Honor.

7 THE COURT: Good morning. You may proceed.

8 MS. BALDWIN: Maisie Baldwin for the United
9 States.

10 THE COURT: Yes, Ms. Baldwin.

11

12 *****

13 CLAIRE ROESCHKE

14 *****

15

16 DIRECT EXAMINATION BY MS. BALDWIN:

17 Q. Good morning, Ms. Roeschke. Would you please state
18 and spell your full name for the record.

19 A. Sure. Claire Roeschke. C-L-A-I-R-E. Last name
20 Roeschke, R-O-E-S-C-H-K-E.

21 Q. Thank you. And, Ms. Roeschke, are you currently
22 employed by JetBlue Airways?

23 A. Yes.

24 Q. You've worked for JetBlue since 2019?

25 A. That's correct.

1 Q. And when you started at JetBlue, you were a Senior
2 Analyst in the Strategy and Business Development
3 department, right?

4 A. Yes.

5 Q. And then in 2021, in June, you were promoted to be a
6 manager in the Strategies Business Development group?

7 A. That's correct.

8 Q. And then in January of 2023, you became a manager in
9 JetBlue's Integration Management Office, right?

10 A. Yes.

11 Q. And that's your current title at JetBlue?

12 A. Yes, a manager of the Integration Management Office,
13 also known as the "IMO."

14 Q. You anticipated my next question.

15 Ms. Roeschke, JetBlue's Integration Management
16 Office was created to plan the incorporation of Spirit's
17 assets into the JetBlue brand if this deal closes, is
18 that fair?

19 A. Yes, that's a general description of the two groups
20 coming together to plan for the eventual potential close
21 in the transaction.

22 Q. And in your role in the IMO, Mrs. Roeschke, you
23 worked closely with Goldman Sachs?

24 A. Correct.

25 Q. Goldman Sachs served as a financing partner for this

1 transaction?

2 A. They served as an advisor for us as well as a
3 financing partner.

4 Q. And in your role as a liaison between JetBlue and
5 Goldman Sachs -- let me start again.

6 In their role as an advisor to JetBlue, Goldman
7 Sachs reviewed JetBlue's projections about the
8 transaction to determine whether JetBlue was paying a
9 fair price to acquire Spirit, right?

10 A. Yeah, that was one of the assistants who assisted us
11 during the transaction.

12 Q. Goldman Sachs issued a document to confirm that the
13 terms of the opposition were fair to JetBlue, right?

14 A. Yes.

15 Q. And they rendered that in the summer of 2022?

16 A. Yeah, that's the right time.

17 Q. And that's called a Fairness Opinion, right,
18 Ms. Roeschke?

19 A. That is, I believe, what it's described as, yeah.

20 Q. And before they rendered their Fairness Opinion, you
21 worked closely with Goldman Sachs to provide them
22 information about JetBlue and Spirit, right?

23 A. Correct.

24 Q. And you understood that the purpose of that was to
25 feed their Fairness Opinion?

1 A. Yes, and, um, provide them context as to, um, yeah,
2 the value that was part of the deal. But they were
3 acting as an advisor as well as a financing partner, so
4 they kind of intermingled.

5 Q. And you understood that Fairness Opinion ultimately
6 went to JetBlue's board of directors, right?

7 A. Yes.

8 Q. And that helped inform JetBlue's board of directors
9 about whether to approve the current terms of the deal?

10 A. That's correct.

11 Q. Some of the work that you did included preparing
12 projections for a combined JetBlue-Spirit fleet, right?

13 A. Yes.

14 Q. And you worked on these fleet projections with
15 colleagues of yours at JetBlue, right?

16 A. That's correct.

17 Q. And that included Ms. Elle Garella?

18 A. Yes.

19 Q. And what was Ms. Garella's title at that time?

20 A. She was also a manager in the Strategy and Business
21 Development group.

22 Q. So you were in sort of parallel roles?

23 A. Correct, we were peers.

24 Q. In addition to creating fleet projections, you also
25 provided Goldman Sachs with financial models, is that

1 right?

2 A. That's true.

3 Q. And those financial models were called the "Spirit
4 Standalone Model" and the "JetBlue Standalone Model,"
5 right?

6 A. That's correct.

7 Q. And you were the person at JetBlue who was primarily
8 responsible for this so-called "Spirit Standalone
9 Model," right?

10 A. Yes.

11 Q. And to create the Spirit Standalone Model, before
12 you sent it to Goldman Sachs, you started with Spirit's
13 ordinary-course 5-year financial plan, right?

14 A. A plan that we had developed internally at JetBlue,
15 yes.

16 Q. But the starting point for that development was
17 Spirit's Standalone 5-year financial plan, right?

18 A. Yeah, so it was a plan that we had for Spirit. But
19 the Strategy and Business Development team had
20 developed, um, forecasts and projections for what Spirit
21 might do.

22 Q. I think you're jumping ahead a few steps,
23 Ms. Roeschke.

24 The very starting point of that model that you're
25 describing now was Spirit's internal ordinary-course

1 5-year financial plan, right?

2 A. Yes, I mean it wasn't their internal plan, it was
3 our plan that our team had modeled. Sorry, I'm --

4 Q. That's okay. Spirit sent JetBlue its
5 ordinary-course 5-year financial plan sometime in the
6 spring of 2022, is that right?

7 A. Yes.

8 Q. And they did that via what's called a "data room"?

9 A. Yes.

10 Q. And would you briefly explain what a "data room" is?

11 A. It was an online way to exchange documents in a
12 secure way. It was set up for us to exchange documents
13 as part of a due diligence process for the transaction.

14 Q. So when you're referring to this Spirit Standalone
15 Model, that's a bit of a misnomer because it reflects
16 changes that JetBlue made to Spirit's internal
17 production for itself, right?

18 A. It's our view on what Spirit might do.

19 Q. And in the process of your due diligence, you also
20 reviewed Spirit's order book, right?

21 A. Correct.

22 Q. Spirit's order book contains something called "firm
23 orders"?

24 A. Yes.

25 Q. And would you explain what "firm orders" are,

1 Ms. Roeschke?

2 A. Sure. "Firm orders" are aircraft that have
3 contracts associated with them. So they could be
4 contracts with Airbus, um, another manufacturer, or a
5 lessor.

6 Q. Okay. Spirit's order book also contains something
7 called "Options," right?

8 A. Yes.

9 Q. And those are options for aircraft that a purchaser
10 has the option to buy or not, right?

11 A. Right, the right to acquire an aircraft at a later
12 date.

13 Q. Specifically a deadline by which a buyer needs to
14 execute an option, right?

15 A. Yes.

16 Q. And the terms of Spirit's then-existing options were
17 disclosed to JetBlue during that diligence process in
18 the spring and summer of 2022?

19 A. That's correct.

20 Q. In addition to the Spirit Standalone Model that
21 JetBlue created, you were also responsible for reviewing
22 and sending JetBlue's Standalone Model to Goldman Sachs,
23 right?

24 A. Yes. I reviewed it, but I didn't create it.

25 Q. It contained similar information to the Spirit

1 Standalone Model?

2 A. Yes.

3 Q. So Goldman Sachs received the Spirit Standalone
4 Model and the JetBlue Standalone Model and then
5 projected what a combined JetBlue/Spirit would look
6 like?

7 A. Yes, but they are, um -- they did include synergies
8 on top of that. So there were synergy models that were
9 sent to them as well. They would be incremental on top
10 of what the two standalone companies would do on their
11 own.

12 Q. So once you layered the synergies and dissynergies,
13 we have what's called a "Pro Forma Model"?

14 A. That's correct.

15 Q. And this Spirit Standalone Model that JetBlue
16 created and the Spirit 5-year financial plan have
17 different assumptions for the number of aircraft that
18 would be in Spirit's fleet in the future, right?

19 A. That's correct.

20 Q. The Spirit Standalone Model has a lower fleet count
21 than what Spirit's standalone 5-year financial
22 projection shows, right, Ms. Roeschke?

23 A. Yes, our internal view of what Spirit would do
24 included the firm commitments which were lower than what
25 they had included in their financial plan, which

1 included extra aircraft that did not have firm
2 commitments.

3 Q. To say it differently, Spirit's own internal 5-year
4 financial plan had additional aircraft that JetBlue did
5 not account for in the deal model, right?

6 A. They had additional aircraft, correct, that we did
7 not account for, because when looking at the valuation
8 of this deal, we felt that firm commitments were the
9 best way and most conservative way to model.

10 Q. And so at the time the Spirit so-called "Spirit
11 Standalone Model" that was being developed at JetBlue,
12 you analyzed how the Spirit 5-year financial plan
13 compared the number of aircraft that JetBlue would want
14 to obtain post-transaction, is that what I'm hearing you
15 say?

16 A. It's what we would obtain. When we were thinking
17 about what we're acquiring, um, it's assets, it's
18 liabilities, it's obligations. So to us it's something
19 that we would inherit as part of this transaction and
20 inevitably pay for. And so that's what we, um -- that's
21 why we contemplated it that way, versus using extra
22 aircraft that would not be an obligation to JetBlue upon
23 signing -- or closing rather.

24 Q. I want to talk a bit about the analysis you
25 conducted in May of 2022 regarding the number of

1 aircraft in Spirit's 5-year financial plan and the
2 number of aircraft JetBlue wanted to obtain post-merger.
3 So if you would, um, there's a small binder in front of
4 you. If you would turn to the Tab labeled KR.

5 A. (Turns.)

6 Q. Sorry, it's not "CR" for you, that would have been
7 too convenient.

8 A. (Laughs.)

9 Q. Ms. Roeschke, this is an e-mail that you sent to
10 Ms. Ursula Hurley, Mr. Derek Klinka, Ms. Russo, and
11 Mr. Eric Friedman?

12 A. Yes.

13 Q. And at the time of this e-mail all four of those
14 individuals were colleagues of yours at JetBlue?

15 A. That's correct.

16 Q. You sent this e-mail to them on May 2nd, 2022?

17 A. Yes.

18 Q. The subject line reads "Fleet Rationalization"?

19 A. Yes.

20 Q. And you also attached an EXCEL file named "Project
21 Exchange Fleet Rationalization," right?

22 A. That's correct.

23 Q. And you did in fact send this e-mail, Ms. Roeschke?

24 A. Sorry?

25 Q. You did in fact send this e-mail?

1 A. I did, yes.

2 MS. BALDWIN: Your Honor, at this time plaintiffs
3 move to admit Exhibit KR in evidence as 797.

4 THE COURT: Objection?

5 MR. HAUSER: No objection.

6 THE COURT: KR is admitted, Exhibit 797.

7 (Exhibit 797, marked.)

8 MS. BALDWIN: And at the request of defense
9 counsel, this document contains a number of redactions,
10 so we will publish the redacted versions on all of them.

11 Q. And, Ms. Roeschke, you'll see there's a discrepancy
12 in what you see in your binder and what's on the screen.
13 Again at the request of your counsel, please take care
14 not to divulge any of the specific numbers that are
15 blacked out.

16 Does that make sense?

17 A. Yes.

18 Q. I want to return to the subject line of your e-mail.
19 You called this e-mail "Fleet Rationalization." Do you
20 see that?

21 A. Yes.

22 Q. What did you mean here by "Fleet Rationalization"?

23 A. So "rationalization" is a pretty loose term, it can
24 be used, um, to describe a number of things, but
25 generally it means optimizing an order book, um, for the

1 number or the type of aircraft. So really what I meant
2 here is making a choice between, um, a few different
3 opportunities we had of fleet counts that were available
4 to us. So rationalizing between the two.

5 THE COURT: This is just a parenthetical comment
6 for case administration.

7 The way -- up till this document, but this may be
8 my fault, the way you've handled redactions, um, I find
9 fully acceptable and sensible, and I get an unredacted
10 copy but the unredacted copy has a red box around those
11 matters which the parties, or at least the defendants'
12 parties consider confidential, and so far, one, that's
13 an excellent way to proceed, and, two, I don't see
14 anything that would cause me trouble in preserving
15 defendants' confidentiality when I come to explain, as I
16 must explain, the decision in this case.

17 In this document you refer to it as -- the
18 redactions as "numbers blacked out," but I can't tell
19 what's redacted. And I interrupt because I would
20 prefer, and in fact I think I will give notice to the
21 parties, if when I come to discharge my function under
22 Rule 52, I don't, up till now, and I'm not saying for
23 this witness, it's just a procedural matter. So far it
24 looks to me I can stay away from anything they want to
25 redact, which appears to be future activity and the

1 like, all of which makes sense to me. I don't know what
2 to do with this document if I'm going to use it in the
3 findings of fact.

4 Do you understand my concern?

5 MS. BALDWIN: I do, your Honor.

6 THE COURT: So maybe you could tinker with it so
7 that I know -- so that I have an unredacted document and
8 I know what you've agreed the parties may redact.

9 Forgive the interruption, but I've been so pleased
10 with the procedure up to this document, that I hope it
11 may continue.

12 You go right ahead.

13 MS. BALDWIN: Thank you, your Honor, that's very
14 helpful guidance.

15 Q. So, Ms. Roeschke, a moment ago you mentioned that
16 "fleet rationalization" is sort of a reference to
17 optimizing a combined fleet between JetBlue and Spirit,
18 right?

19 A. That's the way that I'm using "rationalization,"
20 yes.

21 Q. And by "optimizing," you mean optimizing for
22 JetBlue, right?

23 A. Optimizing an order book for a number or type, not
24 for JetBlue, but in a general sense.

25 Q. Well in this particular exercise you were

1 rationalizing or optimizing the combined-firm fleet for
2 the benefit of the combined firm, right?

3 A. Yes, that's what we're modeling.

4 Q. Okay. And in this document, um, Exhibit 797,
5 represents some of the modeling that you did based on
6 Spirit's 5-year financial plan, right?

7 A. Yes.

8 Q. This was the start of the deal-modeling process we
9 talked about a moment ago?

10 A. This was not necessarily the start of a
11 deal-modeling process, this was, um, well within it.

12 Q. It was --

13 A. Sorry, it was within the period which we were
14 evaluating the deal.

15 Q. Okay, so this is a step in the deal-modeling
16 process, a midway step?

17 A. Not a midway step, but I'm simply saying that
18 between June, when we finalized the deal, and April,
19 when we received additional documents, this is in the
20 middle of that.

21 Q. Okay. This leaves out some of the fleet assumptions
22 that were told to Goldman Sachs, right?

23 A. This would include, um, firm orders that were
24 included in the deal model, they're sprinkled throughout
25 this.

1 Q. Goldman Sachs ultimately received the deal model,
2 right?

3 A. Yes.

4 Q. With these numbers included?

5 A. The numbers that were included did not contemplate
6 any deferrals, they were simply the firm orders that
7 were in the fleet plan.

8 Q. You sent this along to your colleague, Ms. Garella,
9 right?

10 A. At some point I do, I believe.

11 Q. Okay. I want to focus on the text that appears
12 above the table.

13 Here in this exercise you were looking at the
14 number of aircraft that combined JetBlue and Spirit
15 would need to increase capacity exactly 5 percent
16 between 2024 and 2025, right?

17 A. That's what this hypothetical model shows, yes.

18 Q. You were also looking at the exact number of
19 aircraft a combined JetBlue and Spirit would need to
20 increase capacity exactly 5 percent for 2025 and 2026,
21 right?

22 A. That was the idea of the tool was to help us
23 understand what that would mean.

24 Q. Who asked you to conduct this exercise,
25 Ms. Roeschke?

1 A. I don't recall exactly who. I believe it came out
2 of one of my due diligence calls. But I don't remember
3 who instructed me to do so.

4 Q. Who else at JetBlue attended due diligence calls
5 that were arranged?

6 A. It was the Strategy and Business Development team
7 that was working on the deal as well as senior leaders
8 that would have oversight to this transaction.

9 Q. That would include Ms. Hurley?

10 A. Yes.

11 Q. And she's the CFO of JetBlue?

12 A. Yes.

13 Q. And she was at the time?

14 A. Yes.

15 Q. So you don't recall who instructed you to do this,
16 do you recall why you were targeting the 5 percent
17 growth number?

18 A. No, we were simply running hypothetical analyses
19 like we did between April and June to better inform our
20 model and pressure test assumptions. It's a pretty
21 typical thing that our group would run, just ad hoc
22 analyses, to better arm, um, our analysis.

23 Q. And when you say April to June, you're referring to
24 2022, right?

25 A. Yes.

1 Q. Thank you for that clarification.

2 So based on this analysis -- again still focused
3 on the text above the tables here, you determined that
4 Spirit's internal 5-year financial plan assumed a plug
5 for aircraft that were not yet represented in Spirit's
6 order book for the year 2025, right?

7 A. Correct, it included noncommitted aircraft.

8 Q. So a plug for aircraft here means that Spirit's
9 5-year financial plan assumed Spirit would get some
10 additional aircraft that were not yet in those firm
11 orders?

12 A. Yes, it assumed additional aircraft.

13 Q. Okay. So then I want to look --

14 MS. BALDWIN: If we could zoom the table at the
15 bottom of Exhibit 797. (On screen.)

16 Q. And you'll see there's a sort of a subtable labeled
17 "NK Net ADDS"?

18 A. Yes.

19 Q. And there's a line that reads "Plugged aircraft for
20 growth not in order book." Do you see that?

21 A. Yes.

22 Q. And this shows your model identified there were 21
23 plugged aircraft that were in Spirit's 5-year financial
24 plan that were not in Spirit's then-existing firm order
25 book, right?

1 A. Correct.

2 MS. BALDWIN: You can take that down and focus on
3 just the top table and the two lines below it. (On
4 screen.)

5 Q. Do you see there are sort of two large columns
6 labeled "2025 v. 2024" and "2026 v. 2025"?

7 A. Yes.

8 Q. And under each of those two primary columns there's
9 three sort of subcolumns?

10 A. Yes.

11 Q. Those are labeled "Aircraft Capacity" and "ASM
12 Growth Percentage," do you see that?

13 A. Yes.

14 Q. The numbers in the Aircraft Column represent the
15 number of additional planes in each company's fleet for
16 the specified year, right?

17 A. Yes.

18 Q. And the Capacity Column here represents the
19 additional number of available seat miles?

20 A. Yes.

21 Q. And these numbers are in the billions, right?

22 A. That's correct.

23 Q. The terminal 3 zeroes have been cut off?

24 A. Right.

25 Q. And the ASM Percentage Growth column is the

1 percentage of ASMs added each year compared to the prior
2 year, right?

3 A. Yes.

4 Q. I want to walk through just what the rows mean
5 briefly.

6 The first row of numbers represents JetBlue on a
7 standalone basis, right?

8 A. Yes.

9 Q. The second row is representing Spirit according to
10 Spirit's 5-year financial plan if it were configured at
11 JetBlue's layout, right?

12 A. Yes.

13 Q. In that change of having them configured to
14 JetBlue's layout is important to note because Spirit's
15 aircraft typically have more seats on them than
16 JetBlue's, right?

17 A. Correct, they have the most leg room, which would
18 mean more seats.

19 Q. The third row here is titled "Combined Incremental
20 Prerationalization"?

21 A. Yes.

22 Q. That's the growth that would be achieved by a
23 combined JetBlue plus Spirit if JetBlue were to follow
24 Spirit's internal standalone plans and JetBlue's
25 standalone plans for finding aircraft, right?

1 A. Correct, if Spirit couldn't contract those
2 additional aircraft.

3 Q. And again the Spirit numbers here are actually
4 already somewhat reduced from Spirit's standalone plans
5 because of this assumption that the Spirit planes would
6 be at the JetBlue layout, right?

7 A. Correct, it would be the JetBlue layout and product
8 and experience.

9 Q. And then the 4th row here is titled "Desired
10 Combined Growth Rate Incremental," do you see that?

11 A. Yes.

12 Q. And like we discussed in this exercise, you
13 identified 5 percent as the desired combined growth rate
14 for this merger for this exercise, right?

15 A. That was what this exercise was trying to toggle to,
16 but it's not what our standalone combined plan would
17 look like from a growth rate perspective. It's just the
18 desired rate for this exercise.

19 Q. The next line down says "Combined Fleet Post-
20 Rationalization," do you see that?

21 A. Yes.

22 Q. And this row represents what the combined fleet
23 would look like if post-merger JetBlue were able to
24 pursue this desired capacity growth rate of 5 percent,
25 right?

1 A. Sure, that's what this hypothetical exercise tells
2 us the fleet plan would be.

3 Q. And you call that "post-rationalization," right?

4 A. Post-rationalization in the sense of this exercise,
5 not in the rationalization that actually occurred, um,
6 when choosing between the financial plan and the fleet
7 plan.

8 Q. I want to look now at the values of some of these
9 tables. We're just going to walk through the 2025
10 versus the 2024 side. I want to start by looking at the
11 number of aircraft.

12 So this first row is showing that if JetBlue went
13 on to acquire Spirit, JetBlue assumed it would add 9
14 additional aircraft between 2024 and 2025, right?

15 A. Yes.

16 Q. That's the total number of assets, not a net number?

17 A. Sorry, I'm mistaken, that is a net number. If you
18 look at the, um, the table below, it shows the 9s and
19 the net and will take on 30 -- I can't see the rest of
20 it there?

21 MS. BALDWIN: If you'd zoom down briefly.

22 (Zooms in.)

23 A. Yes.

24 Q. Okay, this is a net number?

25 A. A net number. I apologize.

1 MS. BALDWIN: Okay, we can zoom back now. Thank
2 you.

3 Q. The second row here shows that if JetBlue weren't to
4 acquire Spirit, Spirit's internal 5-year financial plan
5 showed it would grow by 36 incremental aircraft between
6 2024 and 2026, right?

7 A. That's also a net number, I believe.

8 Q. So an additional 36 planes would be flying for
9 Spirit, right, if this acquisition doesn't go through?

10 A. If they were able to contract the incremental
11 aircraft.

12 Q. And so together that's a total of 45 incremental
13 aircraft between 2024 and 2025, assuming no
14 rationalization, right?

15 A. Yes, if they were able to contract the additional.

16 Q. But in JetBlue's desired post-transaction world,
17 there would only be 28 incremental aircraft, right?

18 MR. HAUSER: Objection.

19 THE COURT: Grounds?

20 MR. HAUSER: Mischaracterizes the testimony.

21 THE COURT: I'm not clear that it does.

22 Overruled.

23 You may answer if you understand the question.

24 THE WITNESS: Thank you.

25 A. It doesn't exactly, or at all, um, show what we

1 desire to do post -- post-acquisition, and one of the
2 growth rates that we show, and any of our standalone
3 models show getting to 5 percent, was just a
4 hypothetical analysis that was performed that is pretty
5 standard for our team to run in order to pressure test
6 all of the assumptions that we had going into our model.
7 Q. This was a hypothetical model that you sent along to
8 Goldman Sachs?

9 A. This model was not sent to Goldman Sachs. But the
10 Pro Forma model was, which included the confirmed
11 combined fleet plan as well as the JetBlue fleet plan.

12 Q. And you created this model, Ms. Roeschke?

13 A. This model here.

14 Q. And you called that 28 number the "Desired Combined
15 Growth Rate," right, you wrote that label?

16 A. I didn't write that label, but as I stated earlier,
17 the desired combined growth rate was for this exercise,
18 not necessarily for the end state for the company, it
19 was for this specific toggled exercise, which in the
20 text here we note that this 5 percent that you see is
21 something that could be toggled. So it's something that
22 I was sending across to our team to help pressure test
23 up/down what this meant for what would be included in
24 the model. And that's what that tool was able -- was
25 supposed to enable.

1 And at the end of the day, none of these numbers
2 ended up in the final deal model. The only numbers that
3 ended up in the deal model were Spirit's fleet plan as
4 firm and committed, plus a couple of incremental
5 aircraft actually in 2025, on top of what they had
6 planned for firm orders.

7 THE COURT: So help me out as to why you were
8 doing this? You say "pressure test it up and down." I
9 don't know what that means.

10 THE WITNESS: Sure.

11 So this 5 percent number that you see here, so in
12 an EXCEL model you can change that around, um, to
13 different numbers, as I'm sure you know. And what it
14 would spit out is --

15 THE COURT: Don't be so sure but --

16 (Laughter.)

17 THE COURT: That's why I'm asking.

18 THE WITNESS: Sure.

19 And what it would spit out would say "To get to
20 this number you would take on more aircraft or you would
21 take fewer aircraft." And so it was simply a way to
22 give our senior leaders a way to understand adding this
23 many aircraft means this gets you this much growth. And
24 potentially, um, if Spirit cannot contract as many
25 aircraft as they were planning, um, this is what the

1 growth rate would be.

2 THE COURT: Thank you.

3 Q. Ms. Roeschke, you don't recall who asked you to
4 target the 5 percent number?

5 A. No, not specifically.

6 Q. And you don't recall why 5 percent was chosen?

7 A. No.

8 Q. So this model is showing that if JetBlue wanted to
9 achieve what you called the "desired combined growth
10 rate" for this exercise, JetBlue wouldn't need all of
11 the aircraft in Spirit's 5-year financial plan, right?

12 A. In this hypothetical exercise, correct, you wouldn't
13 need the 36 aircraft.

14 Q. You wouldn't need the plugged aircraft that Spirit
15 assumed, in its own internal standalone plan, that it
16 would take delivery of, right?

17 MR. HAUSER: Objection.

18 THE COURT: Would you ask the question again?

19 Q. This model shows that JetBlue would not need to take
20 delivery of all of the plugged aircraft in Spirit's
21 standalone 5-year financial plan?

22 THE COURT: Overruled.

23 Q. That's what this model shows?

24 A. That's what this model is intending to get at. It
25 doesn't mean that we wouldn't, at some point, take this

1 additional aircraft. But this was only a hypothetical
2 exercise that was trying to get to whatever number was
3 in that 5 percent, whether it was 8 percent, 2 percent,
4 10 percent.

5 Q. Okay, let's look at the incremental capacity numbers
6 next, Ms. Roeschke.

7 The first row is showing that again if JetBlue
8 doesn't acquire Spirit, JetBlue would add an additional
9 6.1 billion ASMs between 2024 and 2025?

10 A. That's correct.

11 Q. That represents a 7.2 percent ASM growth rate for
12 JetBlue on a standalone basis?

13 A. Yes.

14 Q. The second row is showing that if JetBlue doesn't
15 acquire Spirit, but again Spirit's planes were
16 configured to JetBlue's layout, Spirit would add an
17 additional 9.9 billion ASMs between 2024 and 2025,
18 right?

19 A. Yes.

20 Q. And that represents a 14.5 ASM growth rate for
21 Spirit on a standalone basis, right?

22 A. Yes.

23 Q. The third row is showing that absent any fleet
24 rationalizations, the combined JetBlue and Spirit would
25 add roughly 16 billion additional ASMs in 2025 versus

1 2024, right?

2 A. Yes, if Spirit can contract the additional 21
3 aircraft that they had plugged.

4 Q. That's an ASM growth rate of 10.5 percent, right?

5 A. Yes.

6 Q. But in this modeled JetBlue-desired post-deal world,
7 there would only be about 7.6 billion additional ASMs
8 between 2024 and 2025, right?

9 A. That's not what our model shows, this is what this
10 hypothetical exercise shows.

11 Q. This hypothetical exercise is showing that -- let me
12 start again.

13 This hypothetical exercise, this targeted 5
14 percent growth, shows there would only be about 7.6
15 billion additional ASM if you target at the 5 percent
16 growth rate, right?

17 A. If that's what we targeted. But again that's not
18 what we targeted in 2025 and, um, that's -- if we're
19 actually thinking about what is possible to, um, to
20 deliver from Spirit or defer, if you will, so going up
21 and down. So delivering additional or deferring
22 additional, um, in 2025, JetBlue would have almost no
23 control over what is actually coming in. So the
24 analysis for 2025 is something that is likely already
25 set in stone by the time we would close this deal.

1 Q. This deal model that you conducted did not -- sorry,
2 not this one, but the deal model that you conducted did
3 not assume the entire plug, right?

4 A. It assumed a portion of the plug in 2025. We
5 assumed on top of the committed fleet plan, because
6 between signing and closing we assumed -- so they had an
7 option deadline coming up, so that's -- sorry, I don't
8 have the red boxes on this document. I can't see what
9 is redacted.

10 Okay. So the five options. We did assume that
11 they would exercise those on their own before we had
12 closed the deal, and so that was included in our 2025
13 fleet plan to them. And we also assumed that they would
14 contract an additional 10 aircraft, um, between signing
15 and closing, and as if they were a standalone company,
16 because Spirit still has to assume that that could be an
17 outcome. And so we assume that, um, they would contract
18 an additional 10 deliveries in 2025 for a total of 15 on
19 top of their committed fleet plan, because we wanted to
20 -- at the end of the day our exercise was to value the
21 combined company and we wanted to better understand what
22 we would be inheriting at the end of the day. And
23 that's why we included an additional 15 aircraft that
24 they would have, on their own, contracted between
25 signing and closing.

1 So that's why I say a portion of the plug, um, we
2 would have contemplated as well. So not just the fleet
3 plan, but fleet plan-plus.

4 Q. The number of plugged aircraft that you identified
5 in this exercise is 2021 -- I'm sorry, is 21 for the
6 year of 2025, right?

7 A. Yes.

8 Q. And in the text above the table you write that
9 "JetBlue may not need to defer any aircraft at all,"
10 right?

11 A. That's correct.

12 Q. Because in order to optimize for the combined
13 entity, you didn't want these additional plugged
14 aircraft, right?

15 A. That's not true, it's something we're continuing to
16 explore over time, because we had not set out a business
17 plan for this company yet. What we were doing here is
18 valuing the combined transaction and business plan and
19 it takes a lot more than a limited set of people with a
20 limited set of information modeling this out.

21 Q. Do you know whatever happened to those 21 plugged
22 aircraft?

23 A. No, I'm not aware.

24 Q. All right.

25 MS. BALDWIN: We'll pass the witness.

1 THE COURT: Actually it's a good time -- if you
2 want to inquire, it's a good time to take the recess
3 because I have a meeting at 10:45.

4 Do you want to inquire?

5 Well we'll take the recess now and we'll go to
6 11:15. We'll stand in recess.

7 THE CLERK: All rise.

8 (Recess, 10:42 a.m.)

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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes
before Judge William G. Young, on Thursday, November 16,
2023, to the best of my skill and ability.

/s/ Richard H. Romanow 11-16-23

RICHARD H. ROMANOW Date